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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 415

LOUIS HARRY PARKER,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA.

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OPINIONS BELOW

The Supreme Court of Appeals wrote no opinion in affirming the judgment of conviction by denying a writ of error. The trial judge's oral opinion denying the motion to set the verdict of the jury aside as being contrary to the law and the evidence is not reported.

JURISDICTION

1. The Supreme Court of Appeals denied review on March 11, 1969. On May 20, 1969, this Honorable Court entered an order extending time to file petition for writ of certiorari up to and including August 4, 1969.

2. The federal question was raised as shown below.

3. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

QUESTION PRESENTED

Whether a criminal defendant who was engaged in a legitimate business, is guaranteed a right of privacy in his place of business and is entitled to be secure from police harassment and unlawful search and seizure, pursuant to the Fourth Amendment and the due process clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISION INVOLVED

1. The Fourth and Fourteenth Amendment to the Constitution of the United States are sufficiently familiar as not to require quotation.

STATEMENT

Petitioner, a licensed businessman in the City of Newport News, Virginia, stands convicted of assault and battery upon a City police officer and is in consequence under a sentence of ninety days in jail and a Five Hundred Dollar ($500.00) fine.

The details of the evidence, while in conflict as to whether or not the petitioner was purportedly under arrest or not when he was struck repeatedly by the police officer swinging his blackjack are not in dispute as to the fact that the officer was asked to leave the premises, when he would not give the petitioner a reason for his being there. (Tr. 81, 82).

The facts out of which the single question here presented arises are as follows:

The petitioner was the owner and operator of a combination billiard parlor and food and beer establishment and had been in business in Newport News for approximately five years without any problems or violations. On November 4, 1967, Officer McCoy, who was on duty with the Newport News Police Department at the time walked into petitioner's place of business for what he termed was a "routine check". McCoy asked petitioner about the operation of the pool tables since he was interested in whether they were coin operated. After answering the police officer, petitioner asked McCoy if there was anything further whereupon McCoy said he was checking. Officer McCoy was then asked several times by petitioner to leave and did not do so. Officer McCoy then testified that petitioner started shouting and screaming for him to leave, but never threatened him. McCoy then stated that he placed him under arrest and that the petitioner grabbed him whereupon McCoy drew his blackjack and struck petitioner several times. After being struck, petitioner grabbed a pool cue and struck McCoy one time over the head.

The case was heard before a judge and jury and the original indictment of maiming was reduced to assault and battery.

Following petitioner's conviction of assault and battery, counsel moved to set the verdict aside as being contrary to the law and the evidence. Said motion was summarily overruled by the trial judge.

Petitioner then made application to the Supreme Court of Appeals, Virginia's highest Court, for a writ of error which was denied: "***the Court being of opinion that there is no reversible error in the judgment

complained of, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said hustings court."

HOW THE FEDERAL QUESTION WAS RAISED

1. The contention that petitioner's constitutional rights were violated was raised in his assignments of error and repeated in his petition for writ of error, seeking review of his conviction by the Commonwealth's highest court.

REASONS FOR GRANTING THE WRIT

The mere failure to interpose a defense based on constitutional rights, prior to the announcement of a decision, cannot prevent a litigant from invoking such defense later on appellate review. *Curtis Publishing Co.* v. *Butts,* 388 U.S. 130.

Does the State law give a police officer the absolute right to loiter in a man's place of business seeking, without any prior complaint, to stay there long enough so that something might come into view? We think not. We submit that once the police officer was asked to leave that he became no more than a mere trespasser. If the officer was looking for something specific he should have responded to the owner's inquiry. If he was merely on a "fishing expedition" then he should have left when asked by the petitioner. Should a police officer once having entered the premises under his color of authority be allowed to remain if he refuses to state the purpose of his intrusion? The protection afforded by the Fourth Amendment against administrative searches extends to business premises. *Knoll Associates, Inc.* v. *F.T.C.,* 397 F. 2d 530. A citizen has standing to object to unreasonable search of his office as well as his home.

Mancusi v. *De Forte*, 88 S Ct. 2120. Surely a businessman should have the right to feel secure within his own establishment. Supreme Court decisions have time and again underscored essential purpose of the Fourth Amendment to shield a citizen from unwarranted intrusions into his privacy. *Jones* v. *U.S.*, 357 U.S. 493.

Can there be any doubt that a citizen who is doing nothing more than taking care of his business establishment is entitled to the protection of the due process clause of the Fourteenth Amendment? It would certainly appear that petitioner's right of privacy is interwoven with the protection afforded by the due process clause. *Frank* v. *Maryland*, 359 U.S. 360.

The conversation reached such a fever-pitch that it resulted in physical abuse upon the petitioner. We submit that Officer McCoy's arbitrary intrusion resulted in a breach of the security of the petitioner's privacy. *Stefanelli* v. *Minard*, 342 U.S. 117.

Under the facts that we have before us, we submit that the State cannot rely upon its color of authority to intrude upon the solitude of petitioner in his licensed place of business so as to cause the petitioner to fear that his very livelihood was at stake. Not only was petitioner deprived of his right of privacy, but his business was searched without apparent probable cause, and ultimately petitioner was forced to defend himself upon his own premises.

CONCLUSION

For the foregoing reasons, we respectfully submit this petition for a writ of certiorari should be granted.

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July, 1969.

APPENDIX A.

Judgment.

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 11th day of March, 1969.

The petition of Louis H. Parker for a writ of error and supersedeas to a judgment rendered by the Hustings Court of the City of Newport News on the 22nd day of July, 1968, in a prosecution by the Commonwealth against the said petitioner for a felony, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that there is no reversible error in the judgment complained of, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said hustings court.

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Teste:

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PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner respectfully requests that this Court grant rehearing of its order dated October 27, 1969, which denied certiorari, and that the Court now grant certiorari.

The petition for certiorari previously filed herein presented the question whether the right of privacy under the Federal Constitution extended to protect a businessman convicted of assault and battery against a policeman whom he had asked to leave his place of business.

Should this Court not grant this petition for rehearing and the petition for certiorari previously filed, your

petitioner, who is sixty-two years of age, and who has been a model citizen and businessman in his community all of his life, would have nowhere else to turn.

It is respectfully submitted that this Court does have jurisdiction to hear this matter and should the petitioner be turned down he would have no other legal remedy to protect his rights and liberties.

CONCLUSION

For the reasons set forth in this petition for rehearing, as well as in the petition for certiorari previously filed, rehearing and certiorari should now be granted.

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/s/WILLIAM H. COLONA, JR.
Attorney for Petitioner

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Of Counsel

CERTIFICATE OF COUNSEL

I certify that this petition is presented in good faith and not for delay and is restricted to the grounds specified in Paragraph 2 of Rule 58.

/s/WILLIAM H. COLONA, JR.
Counsel for Petitioner